IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.1055 of 2007

Commissioner of Income Tax,
Chennai. .. Appellant /Respondent.

Vs.

M/s.Meenakshi Narayanan
Investments Pvt. Ltd.,New No.12,
III Main Road, Kasturba Nagar,
Adyar, Chennai. .. Respondent /appellant.

Appeal under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 17.11.2006 made in ITA No.764/Mds/2005, for the assessment year 1997-98 and against the Order of the Commissioner of Income Tax [Appeals] V made in ITA.No.259/2004-05 dated 25.01.2005, and against the Assessment Order by the Asst. Commissioner of Income Tax, Company Circle IV[2] Chennai 34, made in PA.No.GIR No.AAACC 3032B/148-ME dated 25.05.2004 for the Assessment Year 1997-98 respectively.

For Appellant : Mr.J.Naresh Kumar
Jr.Standing Counsel for IT.

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.764/Mds/2005, for the assessment year 1997-98.

2. The Revenue is the appellant. During the relevant assessment year, viz., 1997-98, the assessee filed a return declaring loss of Rs.9.58 lakhs. But, thereafter, the assessee filed a revised return declaring a total income of Rs.95.32 lakhs. On completing the assessment, the assessing officer accepted the claim of the assessee for exemption of non-competition fee. But, later, a notice under Section 148 of the Act was issued, as the assessing officer had reason to believe that income chargeable to tax had escaped assessment. After the order of re-assessment had been passed, the assessing officer found that the "hire purchase management fee" and "syndication fee" had escaped assessment. After taking note of the objections of the assessee, the assessing officer passed the order of re-assessment dated 25.5.2004. Aggrieved against the

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same, the assessee filed appeal before the Commissioner of Income-tax (Appeals), who, by order dated 25.1.2005, confirmed the order of the assessing officer holding that re-opening of assessment is valid and thus, dismissed the appeal. Against the said order of the Commissioner, the assessee filed an appeal before the Income-tax Appellate Tribunal and the Tribunal, by its order dated 17.11.2006, without going into the merits of the case, held that assessement was re-opened on change of opinion and there was no failure on the part of the assessee to disclose material facts which would justify the re-opening beyond four years. Against the said order of the Tribunal, the Revenue has preferred the above appeal raising the following substantial questions of law:

> "1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the re-assessment was only on account of change of opinion?
>
> 2. Whether on the facts and circumstances of the case, the Tribunal was jusstified in holding that the assessee had fully and truly disclosed all material facts ? "

3. Heard Mr.J.Naresh Kumar, learned standing counsel appearing for the Revenue, who fairly submits that the issues raised in this appeal is squarely covered against the Revenue by the decision of this Court in the assessee's own case in T.C.(A) Nos.2680 and 2681 of 2006 by judgment dated 14.12.2006.

4.1. In the earlier decision in T.C.(A) Nos.2680 and 2681 of 2006, the assessement was re-opened on the ground that the income derived from competition fees, which are chargeable to tax, had escaped assessment. This Court, by judgment dated 14.12.2006, referred the decision of this Court in COMMISSIONER OF INCOME-TAX v. ANNAMALAI FINANCE LTD. [(2005) 275 I.T.R. 451], whereunder it has been held as follows:-

> " .. that Section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceedings upon a mere change of opinion. The Assessing Officer proposed to reopen the assessment for the year 1994-95 purely based on the change of opinion, namely, the change in the method of accounting of overdue interest on case or actual receipt basis, when the assessee was following the mercantile system of accounting. The reassessment proceedings were not valid."

4.2. Following the decision of this Court in the case of Annamalai Finance Ltd., referred supra, this Court held that reopening of assessment merely on the basis of change of opinion is invalid and thus, held the issue against the Revenue and in favour of the assessee.

4.3. That apart, the Apex Court, in the case of Commissioner of Income-tax Vs. Foramer France, (2003) 264 ITR 566 (S.C.), held that if there is no failure to file return or to disclose fully and truly all material facts, issuance of notice beyond the period of four years is barred by limitation.

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5.1. In the instant case, subsequent to the order of re-assessment in respect of exemption claimed for competition fees, which on appeal by the Revenue, was held invalid, again, the assessing officer re-opened the assessment on the ground that "hire purchase management fee" and "syndication fee" had escaped assessement. It was the categorical finding of the Tribunal that the claim of Rs.16.50 lakhs towards hire purchase management fee and syndication fee is very much available before the assessing officer at the time of completion of original assessement as well as earlier re-assessment which was completed on 28.3.2002 and hence, there was no failure on the part of the assessee and no income chargeable to tax had escaped assessement as the assessee had disclosed fully and truly all material facts necessary for the assessement and hence, second reassessment on the same set of facts is not at all warranted.

5.2. In view of the above, following the decision of this Court in COMMISSIONER OF INCOME-TAX v. ANNAMALAI FINANCE LTD. [(2005) 275 I.T.R. 451], referred supra, and in view of the decision of this Court in the assessee's own case in T.C.(A) Nos.2680 and 2681 of 2006 dated 14.12.2006, we hold that the Tribunal has rightly come to the conclusion that the reassessment is invalid, as the assessee had disclosed fully and truly all material facts necessary for the assessement.

Accordingly, finding no substantial question of law arises for consideration by this Court, the above Tax Case Appeals stand dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Assistant Registrar,
  Income Tax Appellate Tribunal
  Madras Bench "B".
2.The Secretary, Central Board
  of Direct Taxes, New Delhi.
3.The Commissioner of Income-
  Tax (Appeals), Chennai.
4.The Assistant Commissioner of
  Income-tax, Company Circle-IV(2),
  Chennai.

+ 1 CC To Ms.Pushya Sitaraman, Advocate SR NO.42408

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